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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 402

CHARLIE LOVE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

CHARLIE LOVE,
Pro se.

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CHARLIE LOVE

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Charlie Love, is seeking certiorari in this case to review a decision of the Circuit Court of Appeals for the Fourth Circuit affirming a Judgment of the District Court for the Middle District of North Carolina, Wilkesboro Division. Said Judgment having been affirmed by the United States Circuit Court of Appeals for the Fourth Circuit on the 9th day of October, 1948, by case No. 5763.

Petitioner is at present time on bond.

The Respondent is the United States of America.

Statement

The petitioner contends that error was committed by the trial court and that the Circuit Court of Appeals committed error in affirming the action of the trial court, and that such errors deprived him of his constitutional rights as guaranteed to him under the 4th Amendment to the Constitution of the United States.

The present action was instituted by an indictment at the May term of the United States District Court for the Middle District of North Carolina on the 20th of May, 1948, at Wilkesboro, North Carolina, charging the appellant, Charlie Love, with violation of the Internal Revenue Law as set out by four counts in the Bill of Indictment, first count charging possessing of a still without having registered same. Second count, carrying on the business of a distillery without having given bond. Third count made and fermented mash fit for distillation on premises other than a distillery. Fourth count possessing distilled spirits in containers which did not have the required stamps affixed thereto.

On the 6th day of May, 1948, United States Deputy Marshal Walter M. Irwin had a warrant for the arrest of Ray Foster and that he had information that the said Ray Foster was staying either at the home of his mother or at Charlie Love's home or at least one other place in that community, that Deputy Marshal Irwin called A.T.U. agents Dotson and Kiefer to go with him and assist in making the arrest of Ray Foster. That after first searching the home of Ray Foster's mother they then went to the home of Charlie Love which was some 400 yards away. That while the A.T.U. agents surrounded the house Marshal Irwin knocked on the front door and when Charlie Love answered Marshal stated that he was looking for Ray Foster, Love stated that Foster was not there, Irwin then said that he would have to look and then entered the house. Neither Marshal Irwin

or the A.T.U. agent had any search warrant or other process for Charlie Love except the warrant Marshal Irwin had for Ray Foster. Neither of the witnesses ever saw Ray Foster at the home of Charlie Love or knew of him being any relation to Charlie Love. A.T.U. agent Dotson had information some thirty days prior to this time that Charlie Love was operating a distillery in his basement. When Marshal Irwin entered the house and as he entered one of the rooms of the house he came upon a filtering plant consisting of a filtering bag and a wash tub in operation. Whereupon he called A.T.U. agent Dotson who came in and took charge and placed Charlie Love under arrest for possession of distilled spirits. And on continuing the search there was a total of approximately 400 gallons of distilled spirits in the house and when the A.T.U. agent searched the basement they found a distillery complete and 22 50 gallon fermenters with 1,000 gallons of spent mash, and an 85-gallon still which had recently been operated. The officers were unable to find Ray Foster in the home of Charlie Love.

After the search the petitioner was brought before the United States Commissioner and required to give bond.

Petitioner in apt time filed motion to suppress the evidence and at the trial of this case pleaded not guilty, and waived trial by jury and consented for the court to find the facts. Furthermore, the defendant also objects without waiving his rights to question the competency of the evidence, and consented that the evidence offered in connection with the motion to suppress may be regarded as evidence in this case but over the objection of the defendant on the grounds that the evidence was illegally obtained and that the evidence is incompetent.

The court at the close of the evidence overruled the motion to suppress, found the defendant guilty as charged in the Bill of Indictment, and pronounced sentence.

Jurisdiction

Jurisdiction of this Court is invoked under Sections 237(b) and 240(a) of the Judicial Code as amended by the Acts of February 13, 1925, in Title 28 U.S.C.A., Sections 344(b) and 347(a), also Act of March 8, 1934.

Questions Presented

1. Were the petitioner's rights as guaranteed to him under the Fourth Amendment violated by the search of the petitioner's home without a search warrant?

2. Did the Circuit Court of Appeals err in affirming the judgment of the trial court?

Reasons for Allowance of Writ

1. The Circuit Court of Appeals held that the search was legal and affirmed the District Court's judgment in denying the motion to suppress evidence and quash the Bill of Indictment which is contrary to the Fourth Amendment of the Constitution of the United States and also contrary to the decision of the Supreme Court of the United States in the cases of *Weeks* v. *United States,* 232 U. S. 387; *Agnello* v. *United States,* 269 U. S. —; *Marrion* v. *United States,* 48 S. Ct. 75; *Carroll* v. *United States,* 267 U. S. 132; *Taylor* v. *United States,* 286 U. S. 1, 6; *Harris* v. *United States,* 331 U. S. 145; *Davis* v. *United States,* 328 U. S. 582.

The Fourth Amendment forbids every search that is unreasonable and is construed liberally to safeguard the right of privacy. *Byars* v. *United States,* 273 U. S. 28, 32, 47 S. Ct. 248, 71 L. Ed. 520. Its protection extends to offenders as well as to the law-abiding. *Weeks* v. *United States,* 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915 C. 1177; *Agnello* v. *United States,* 269 U. S. 20, 32, 46 S. Ct. 4, 70 L. Ed. 145, 51 A. L. R. 409. The authority of officers to search one's house or place of

business contemporaneously with his lawful arrest therein upon a valid warrant of arrest certainly is not greater than that conferred by a search warrant issued upon adequate proof and sufficiently describing the premises and the things sought to be obtained. Indeed, the informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime. *United States* v. *Kirschenblatt* (C. C. A.), 16 F. (2d) 202, 203, 51 A. L. R. 416; *Go-Bart Co.* v. *United States, supra,* 282 U. S. 358, 51 S. Ct. 153, 75 L. Ed. 374.

In this case the officers did not have the quality of knowledge or information that is necessary to cause a search warrant to issue, but had information that Ray Foster would be either at the home of his mother, or at the home of Appellant or at some other place in the community, so under the pretext or excuse of probable cause and with one of the officers having information that a distillery was being operated in the home of Petitioner these officers searched houses in that community at will, and with disregard for the rights of the people secured them under the fourth amendment of the constitution. There were three places searched that night and no arrest made of Ray Foster.

In *Angello* v. *United States,* 269 U. S. —, Justice Butler says: "While the question has never been directly decided by this Court it has always been assumed that one's house cannot lawfully be searched without a search warrant except as incident to a lawful arrest therein. There was no lawful arrest in the home of Appellant upon which to base a search

but rather a search, without a warrant upon which an arrest was based. Of what value is the fourth amendment or any other of the amendments that make up the bill of rights and guarantees which were guaranteed us by the framers of the constitution? How can there be freedom of thought, freedom of speech or freedom of anything, or how can we American citizens be free from illegal search and seizures if the police can search your house and mine at will simply because they are armed with a warrant of arrest for someone with whom we are not in any way associated and whom someone has told them might be staying at either my home or yours?

This case differs from *Harris* v. *United States*, 331 U. S. 145 in that the warrant was for the arrest of Harris and not for another party. Judge Frankfurter dissenting says, "To find authority for ransacking a home merely from the authority for the arrest of a person is to give a novel and ominous rendering to a momentous chapter in the history of Anglo-American freedom. Authority to arrest does not dispense with the requirements of authority to search. While a few of the lower Courts have uncritically and unwarrantedly extended the very limited search without warrant of a person upon his lawful arrest, such a policy is hostile to the policy of the amendment and is not warranted by the precedents of this court."

To permit a search of this character, converts a warrant for the arrest of any person into a general search warrant, lacking all of the constitutional safeguards, is demonstrated most plainly by the fact that three homes were searched and no arrest made on the warrant in question, and no evidence uncovered pertaining to the crime for which the warrant was issued; nor was there any probable cause or any basis for an oath or affirmation which could justify a valid search warrant; no evidence charged in the warrant of ar-

rest had been found; no prosecution of Appellant for any crime had developed. Strict limitations have been placed upon searches and seizures without a warrant in connection with a lawful arrest as are shown in *Marron* v. *United States*, 275, U. S. 192.

Certainly the constitution is not dependent upon the whim or convenience of law enforcement officers. A search should not be made without a warrant where the opportunity for the issuance of a warrant exists. *Carroll* v. *United States*, 267 U. S. 132; *Taylor* v. *United States*, 286 U. S. 1, 6.

The fourth amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath, or affirmation, and particular describing the place to be searched and the thing to be seized.

When a search degenerates into a general exploratory crusade probing for everything and everybody, with a wanton disregard for the privacy of the homes, then the constitution steps in to protect the individual. The right to be let alone, to be secure, except under responsible judicial compulsion is exactly what the fourth amendment meant to express and to safeguard.

WHEREFORE, Your petitioner prays, That a writ of certiorari issue out of and under the seal of this Honorable Court directing the United States Circuit Court of Appeals for the Fourth Circuit to certify and send to this Court for its review, as provided by law, this case and a complete transcript of the records and all the proceedings had herein; to the end that this case may be reviewed and determined by this Honorable Court as provided by the Statute of the United States, and that the Judgment herein of the United States Circuit Court of Appeals for the Fourth Circuit

may be reversed and that the petitioner may have such other and further relief in the premises as this Court may deem proper.

CHARLIE LOVE,
Petitioner;
T. R. BRYAN,
Counsel for Petitioner.

This the 4th day of Nov., 1948.

(9260)

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 402

CHARLIE LOVE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The oral opinion of the District Court (R. 20-22) is not reported. The *per curiam* opinion of the Court of Appeals (R. 24-26) is reported at 170 F. 2d 32.

JURISDICTION

The judgment of the Court of Appeals was entered on October 9, 1948 (R. 27). The petition for a writ of certiorari was filed on November 8, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

A United States Marshal, armed with a properly issued warrant for the arrest of one Foster,

entered petitioner's house without objection by him upon reliable information that Foster was there. While so looking for Foster, the Marshal saw illegal whiskey being filtered. Petitioner was arrested and further search of the house revealed an illicit still. The question is whether petitioner's rights under the Fourth Amendment were violated.

STATUTES INVOLVED

Revised Statutes, §§ 787-788, as amended, 28 U. S. C. (1946 ed.) 503-504 (now 28 U. S. C. 547, 549), provided:

> It shall be the duty of the marshal of each district to attend the district courts when sitting therein and to execute all lawful precepts issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.
>
> The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof.

The Act of March 1, 1879, c. 125, sec. 9, 20 Stat. 327, 18 U. S. C. (1946 ed.) 593 (repealed under the recent revision of Title 18 of the United States Code [1]), provided in pertinent part:

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[1] The statute was repealed because its provisions were already covered by 28 U. S. C. (1946 ed.) 503 and 504, *supra*, by Rule 5 (a), F. R. Crim. P., and by revised 18 U. S. C. 3053.

> Where any marshal or deputy marshal of the United States within the district for which he shall be appointed shall find any person or persons in the act of operating an illicit distillery, it shall be lawful for such marshal or deputy marshal to arrest such person or persons, * * *.

STATEMENT

A four-count indictment was filed in the District Court for the Middle District of North Carolina charging that on May 6, 1948, petitioner had committed various violations of the Internal Revenue Code relating to liquor (26 U. S. C. 2810, 2833, 2834, 2803) (R. 1-2). Before trial, petitioner moved that the evidence against him be suppressed on the ground that it had been obtained by an illegal search of his home (R. 3-5). He waived trial by jury and consented that the evidence be presented at the trial, subject to the court's decision on the motion to suppress. The court heard the evidence, overruled the motion, and found petitioner guilty on all counts. The sentence imposed was a penalty of $500, a fine of $1,000, and imprisonment for eighteen months (R. 22.) The judgment was affirmed on appeal (R. 27).

The evidence adduced by the Government on the merits and on the motion to suppress is undisputed and may be summarized as follows:

On May 6, 1948, Agent Dotson of the Alcohol Tax Unit obtained from the United States Commissioner a warrant for the arrest of one Ray Foster, which he delivered to Deputy United

States Marshal Irwin for execution (R. 7, 11-12). That afternoon, Deputy Marshal Bessant received information from a reliable source that Foster would be either at the home of his mother or at petitioner's home that night. Bessant communicated this information to Irwin, but was then called away to another part of the district. (R. 6, 8, 9, 10, 16-17, 18.) There was testimony that when the deputy marshals have arrest warrants to execute, they customarily take along other officers to prevent escapes, and that the deputies and the agents of the Alcohol Tax Unit frequently call upon each other for help in cases of this sort (R. 10, 11, 14, 17). Since Bessant was unavailable, Irwin asked Agents Dotson and Kiefer to accompany him to assist in executing the warrant for Foster's arrest (R. 10, 11-12, 17).

That evening, Irwin, accompanied by Dotson and Kiefer, went to the home of Foster's mother, which Irwin searched without finding Foster (R. 6, 9, 18). They then went to petitioner's home, which was 400 yards to half a mile distant (R. 6, 9). Stationing Kiefer at the front and Dotson at the back, Irwin went to the back door and asked petitioner whether Foster was there. Petitioner said he was not. Irwin told petitioner that he had a warrant for Foster, that he had information that Foster was in petitioner's house, and that he would have to investigate (R. 6-7, 8). Without objection by petitioner, Irwin walked into the house,

and pushing open a door on the right, he saw a filter plant in operation containing about 15 gallons of illicit whiskey (R. 6-8). Irwin immediately called Dotson, saying, "I have got more than I can handle" (R. 7, 8, 12). Dotson entered and, seeing the filter plant, immediately placed petitioner under arrest (R. 9, 12, 13). A further search by Dotson revealed more illegal whiskey in a room across the hall; in the basement he found hot mash and a still which had recently been in operation (R. 7, 13).

Later that night, in pursuance of further information received after they left petitioner's home, the three officers continued their search for Foster by looking for him at the home of George Hendren (R. 15-16).

During cross-examination of Irwin, the court asked whether his entrance into petitioner's house was in good faith or was merely a ruse. Irwin replied that he acted in good faith and that he had no prior information of any violations occurring in petitioner's house (R. 9; cf.R. 19). The court also carefully questioned Dotson as to whether he accompanied Irwin as a ruse to search petitioner's house for a still, but Dotson insisted that his only purpose was to aid Irwin in arresting Foster (R. 14, 18-19; cf. R. 12). During the course of this examination, Dotson said that about a month earlier, on April 3, 1948, he received some information of a very indefinite nature that peti-

tioner might have a distillery in his house; this was the only report he heard and it was all the information he had about petitioner (R. 18-19).

Petitioner did not take the stand and offered no evidence in his own behalf (R. 19). The trial court found as a fact that the officers entered petitioner's house in good faith and observed the violations in the course of their search for Foster; the court concluded that since the officers were lawfully on petitioner's premises they had a right to arrest petitioner and seize the evidence (R. 20-21).

ARGUMENT

Petitioner contends (Pet. 5) that the officers, not having sufficient information of a violation on his premises to obtain a search warrant, obtained entrance under a pretext of looking for Foster. We quite agree that if these had been the facts the search would have been illegal. But petitioner is precluded on this issue by the findings of the trial court. For the court, after carefully cross-examining the officers, found upon the undisputed evidence that they acted in good faith with reasonable grounds for belief that Foster, for whom they had a warrant of arrest, was in petitioner's house.

In these circumstances, there can be no doubt that Deputy Marshal Irwin had the right to enter petitioner's house to search for Foster. United States marshals and their deputies have in each State, the same powers in enforcing federal laws as the sheriffs of the State have in executing state

law. 28 U. S. C. 504, now 28 U. S. C. 549 (*supra*, p. 2); *United States* v. *Di Re*, 332 U. S. 581, 590; *Cline* v. *United States*, 9 F. 2d 621 (C. A. 9); *United States* v. *Sully*, 56 F. Supp. 942 (S.D. N.Y.). Under the law of North Carolina, a sheriff, armed with a valid arrest warrant and acting in good faith in the belief that the person named in the warrant is within premises where the sheriff seeks to find him, may even break down the doors in order to gain entry and execute the warrant, and this even though the house be that of a third party. Nor is it material that the person sought is not found within the house, so long as the officer had reasonable grounds for belief that he was there. *State* v. *Mooring*, 115 N. C. 709 (1894); *State* v. *Shook*, 224 N. C. 728, 733 (1944). This North Carolina law conforms to the common law and the generally accepted practice in other states. *United States* v. *Faw*, 1 Cranch C. C. 486; *Kelsy* v. *Wright*, 1 Root (Conn.) 83 (1783); *State* v. *Shaw*, 1 Root (Conn.) 134 (1789); *Hawkins* v. *Commonwealth*, 14 B. Mon. (Ky.) 395, 397-398 (1854); *Barnard* v. *Bartlett*, 10 Cush. (Mass.) 501, 503 (1852); *Commonwealth* v. *Reynolds*, 120 Mass. 190, 196 (1876); *Hughes* v. *State*, 196 Miss. 282 (1944); *State* v. *Smith*, 1 N. H. 346, 347 (1818); 1 East, *Pleas of the Crown*, 321-324; Foster, *Crown Law*, 320-321; and see the numerous cases set forth in the Note at 5 A. L. R. 263. See also *Gibson* v. *United States*, 149 F. 2d 381, 383 (C.A. D.C.), certiorari denied *sub nom. O'Kelley* v. *United*

States, 326 U. S. 724; *Lane* v. *United States,* 148 F. 2d 816 (C. A. 5), certiorari denied, 326 U. S. 720; *Paper* v. *United States,* 53 F. 2d 184 (C. A. 4); *United States ex rel. Flynn* v. *Fuellhart,* 106 Fed. 911, 913-914 (C.C. W.D. Pa.). We think it clear that Irwin's entry into petitioner's house was lawful, and that he had the right to make a reasonable search to determine whether Foster was there. Furthermore, he had the right to call upon the other two officers to help him. 28 U. S. C. (1946 ed.) 503, now 28 U. S. C. 547 (*supra,* p. 2).

Being lawfully on the premises looking for Foster, the officers saw in open view, without further search, the filtering apparatus and illicit liquor. They thereupon arrested petitioner, as was their right and duty; and, quite reasonably in the circumstances, they proceeded to search the rest of the premises and found other liquor and the distilling apparatus used to manufacture the liquor which they saw in the process of filtration. Although the record is silent on this score, it is reasonable to infer that in searching the rest of the house, the officers were pursuing their original purpose to find Foster as much as to ascertain whether there was more illegal liquor or a distillery in the house, for presumably they would have looked through the whole house even if they had not seen the liquor behind the first door they opened. The situation here, therefore, is one where officers who have lawfully entered upon premises (cf. *Johnson* v. *United States,* 333 U. S.

10; *McDonald* v. *United States,* No. 36, decided December 13, 1948), and who had no prior knowledge of a crime being committed there or even expectation of discovering crime and no purpose to search for the means of commission of a crime, come upon crime being committed before their very eyes. We submit that, in such circumstances, their arrest of petitioner and the subsequent search of his house and seizure of the contraband they found in such search were entirely reasonable, even without the support of the fact that they had a right to go through the whole house in their search for Foster. *Harris* v. *United States,* 331 U. S. 145; *Marron* v. *United States,* 275 U. S. 192, 198-199; *Paper* v. *United States,* 53 F. 2d 184 (C. A. 4).

Here, unlike the situations in *Trupiano* v. *United States,* 334 U. S. 699, and the *Johnson* and *McDonald* cases, the officers had no such prior knowledge of the violations being committed in petitioner's house as would have required them under those decisions to seek a search warrant. Instead, they were already lawfully *within* the house for a wholly different purpose when they discovered the violations. Consequently, "the time element and the foreseeability of the need for a search and seizure that made the warrant essential" [2] in those cases were absent here. We

[2] *Trupiano* v. *United States,* 334 U. S. 699, 709; see also *McDonald* v. *United States, supra,* slip opinion, p. 4; concurring opinion, p. 3.

think it was never intended to be said that officers who have come upon a crime by chance while lawfully within a house must desist until a search warrant can be obtained.

Petitioner contends (Pet. 6-7) that to permit a search of this character converts an arrest warrant into a general search warrant, lacking all the constitutional safeguards. This is obviously not so for the officer holding the arrest warrant may not enter a house unless he acts in good faith and has reasonable grounds for believing that the person named in the warrant is within. Furthermore, once within, the officer must conduct his search in a manner befitting its object and not engage in a general exploratory rummaging. On both these counts, the officers in the present case, as we have seen, behaved themselves in an exemplary fashion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JANUARY 1949.

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